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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,664	01/15/2004	Fred Messenger	112025-0080C1	5895
24267 7590 12/27/2007 CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210				
EXAMINER				
KE, PENG				
ART UNIT		PAPER NUMBER		
2174				
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12/27/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,664

Applicant(s)

MESSINGER ET AL.

Examiner

SIMON KE

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-11, 13-19, 22-29, 31-37, 40-47 and 52-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-11, 13-19, 22-29, 31-37, 40-47, and 52-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is responsive to communications: Amendment, filed on 10/5/07.

Claims 1, 4-11, 13-19, 22-29, 31-37, 40-47, and 52-54 are pending in this application.

Claims 1, 19, and 37 are independent claims. In the Amendment, filed on 10/5/07, claims 1, 14, 16, 17, 18, 19, 28, 32, 35, 36, 37, and 52-54 were amended.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 5, 19, 22, 23, 37, 40, and 41 are rejected on the ground of nonstatutory double patenting over claims 1, 4, 5, and 12 of U. S. Patent No. 6,687,750 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: "monitoring traffic on said network; selecting a characteristic of a said traffic for display; obtaining a plurality of values of said characteristic for selected time intervals within a larger time interval; and presenting said characteristic by playing a rapid succession of graphical images, each graphical image representing said network as nodes connected by lines, said lines representing traffic flow between nodes, each graphical image graphically representing the value of said characteristic at a particular selected time interval within the larger time interval with; a property of at least one line of said lines, said property indicating a value of said characteristic; using a width of said at least one line as said property.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9, 13, 16, 19, 23, 27, 31, 34, 37, 41, 45, 49, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837

As per claim 1, Rakoshitz teaches a method for graphically presenting characteristics of data traffic on a distributed computer network, comprising:

monitoring traffic on said network; (see Rakoshitz ; col. 2, lines 35-65)

selecting a characteristic of said traffic for display; (see Rakoshitz; col. 20, lines 15-30)

obtaining a plurality of values of said characteristic for selected time intervals within a larger time interval; (see Rakoshitz; col. 20, lines 40-65) and

presenting said characteristic represented as nodes connected by lines, said lines representing traffic flow between nodes, each graphical image graphically representing the value of said characteristic at a particular selected time interval within the larger time interval with and property of at least one line of said lines, said property indicating a value of said characteristic. (see Rakoshitz; col. 20, lines 15-30)

However, Rakoshitz fail to teach playing a rapid succession of graphical images each graphical image in representing said network.

Battat teaches playing a rapid succession of graphical images each graphical image in representing said network. (see Battat, paragraph 0109-0113)

It would have been obvious to an artisan at the time of the invention to include Battat's teaching with method of Rakoshitz in order provide users with a visualization of the network.

As per claim 5, Rakoshitz and Battat teach the method as in claim 1. Rakoshitz further teaches the method comprising: using a color of said at least one line as said property. (see Rakoshitz col. 21, lines 1-20)

As per claim 9, Rakoshitz and Battat teach the method as in claim 1. Rakoshitz further teaches further comprising: using a visual characteristic of said at least one line as said property.

(see Rakoshitz col. 21, lines 1-20)

As per claim 13, Rakoshitz and Battat teach the method as in claim 1. Rakoshitz further teaches comprising:

using a filtering program to select records in network information files that meet selected filtering criteria. (see Rakoshitz, col. 19, lines 55-col. 20, lines 10)

As per claim 16, Rakoshitz and Battat teach the method as in claim 1. Battat further teaches the method comprising:

displaying a map of the network topology and overlaying the map with said succession of graphical images. . (see Battat, paragraph 0109-0113)

As per claims 19, 23, 27, 31, and 34; claims 37, 41, 45, 49, and 52, they are rejected under the same rationale as claims 1, 5, 9, 13, and 16. Supra.

Claims 4, 6, 22, 24, 40, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837 further in view of Reichert US Patent 5,720,022

As per claim 4, Rakoshitz and Battat teach the method as in claim 1. However they fail to teach further comprising: using a width of said at least one line as said property.

Reichert teaches using a width of at least one line property. (see Reichert; col. 1, lines 40-50)

It would have been obvious to an artisan at the time of the invention to include Reichert's teaching with method of Rakoshitz and Battat in order to provide user with a plurality of dimensional representation attributes.

As per claim 6, Rakoshitz and Battat teach the method as in claim 1. However they fail to teach using an arrow drawn on said at least one line as said property.

Reichert teaches using a width of at least one line property. (see Reichert; col. 1, lines 40-50)

It would have been obvious to an artisan at the time of the invention to include Reichert's teaching with method of Rakoshitz and Battat in order to provide user with a plurality of dimensional representation attributes.

As per claims 22 and 24; 40 and 42, they are rejected under the same rationale as claim 4 and 6. Supra.

Claims 7, 8, 25, 26, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837 further in view of Tonelli US Patent 5,821,937

As per claim 7, Rakoshitz and Battat teach the method as in claim 1. However they fail to teach using a length of said at least one line as said property.

Tonelli teaches using a length of said at least one line as said property. (see Tonelli figure 21 with “length” setting in figure 7)

It would have been obvious to an artisan at the time of the invention to include Tonelli’s teaching with method of Rakoshitz and Battat in order to provide user with a plurality of dimensional representation attributes.

As per claim 8, Rakoshitz and Battat teach the method as in claim 1. However, they fail to teach using a density of said at least one line as said property.

Tonelli using a density of said at least one line as said property. (see Tonelli figure 21 with “Line Segments” setting in figure 7)

It would have been obvious to an artisan at the time of the invention to include Tonelli’s teaching with method of Rakoshitz and Battat in order to provide user with a plurality of dimensional representation attributes.

As per claims 25 and 26; 43 and 44; they are rejected under the same rationale as claim 7 and 8. Supra.

Claims 10, 11, 28, 29, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837 further in view of Jacoby US Patent 5,768, 552

As per claim 10, Rakoshitz and Battat teach the method as in claim 1. However, they fail to teach further comprising:

- displaying a filtering expression in a graphical user interface;
- selecting from said graphical user interface, records from network information files to display said characteristic of said traffic.

Jacoby teaches displaying a filtering expression in a graphical user interface; selecting from said graphical user interface, records from network information files to display said characteristic of said traffic. (see Jacoby figure 4)

It would have been obvious to an artisan at the time of the invention to include Jacoby's teaching with method of Rakoshitz and Battat in order to provide user with a plurality of interface selections.

As per claim 11, Rakoshitz, Battat and Jacoby teach the method as in claim 10. Jacoby further teaches further comprising:

- calculating parameters that are associated with the records selected from network files and storing the parameters in a local file. ("file" option in the control panel in Figure 4 of Jacoby)

As per claims 28 and 29; 46 and 47, they are rejected under the same rationale as claim 10 and 11. Surpa.

Claims 14, 15, 17, 32, 33, 35, 50, 51, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837 further in view of Reps US Patent 6,070,190

As per claim 14, Rakoshitz and Battat teach the method as in claim 13. further comprising: compiling the selected appropriate records from network information files during the selected time intervals, each compiled record meeting at least one selected filtering criterion.

Reps teaches (6,070,190) selecting appropriate records from network information files during the selected time intervals, each compiled record meeting at least one selected filtering criterion. (see col. 14, lines 45-61)

It would have been obvious to an artisan at the time of the invention to include Reps' teaching with method of Rakoshitz and Battat in order to provide user with ability to sample specific time intervals.

As per claim 15, Rakoshitz, Battat, and Reps teach the method as in claim 14. Reps further teaches comprising: calculating data that represent the compiled records, and storing the data in a file. (see col. 14, lines 45-61)

As per claim 17, Rakoshitz, Battat, and Reps teach the method of claim 14. Reps further teaches comprising: including a time interval criterion which indicates how often to compile and package information from the network information files. (see col. 14, lines 45-61)

As per claims 32, 33, and 35; 50, 51, and 53, they are rejected under the same rationale as claim 14, 15, and 17. Supra.

Claims 18, 36, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakoshitz US Patent 6,578,077 in view Battat US Publication 2002/0013837 further in view of Trcka US Patent 6,453,345.

As per claim 18, Rakoshitz, and Battat teach the method of claim 1. They fail teach further comprising:

defining the larger time interval with a starting time and an ending time specified within a filtering criteria.

Trcka (US 6,453,345) teaches defining the larger time interval with a starting time and an ending time specified within a filtering criteria. (Figure 13)

It would have been obvious to an artisan at the time of the invention to include Trcka's teaching with method of Rakoshitz and Battat in order to provide user with ability to sample specific time intervals.

As per claims 36 and 54, they are rejected under the same rationale as claim 18. Supra.

Response To Arguments

Applicant's arguments with respect to claims 1, 4-11, 13-19, 22-29, 31-37, 40-47, and 52-54 have been considered but are deemed to be moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SIMON KE whose telephone number is (571)272-4062. The examiner can normally be reached on M-Th and Alternate Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peng Ke

/S. K./
Examiner, Art Unit 2174

/David A Wiley/
Supervisory Patent Examiner, Art Unit 2174